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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

EPIC GAMES, INC.,

Plaintiff, Counter-Defendant,

v.

APPLE INC.,

Defendant, Counterclaimant.

Case Nos. 4:20-CV-05640-YGR

**NON-PARTY VALVE CORPORATION'S  
ADMINISTRATIVE MOTION TO SEAL  
CERTAIN TRIAL EXHIBITS OF  
DEFENDANT APPLE, INC. AND TO  
SEAL THE COURTROOM DURING  
PRESENTATION OF CERTAIN  
CONFIDENTIAL MATERIAL AT TRIAL**

Pursuant to Federal Rule of Civil Procedure 26(c) and Local Rule 79-5, Non-Party Valve Corporation ("Valve") brings this motion to seal the following Trial Exhibits on the ground that they contain confidential, highly sensitive, and competitively-valuable information, including confidential business strategies, contractual terms, and other competitively sensitive information, the release of which would harm Valve, a non-party :

DX-3585

DX-4514

DX-3746

DX-5320

DX-3868	DX-5321
DX-3931	DX-5322
DX-4200	DX-5333
DX-4202	DX-5365
DX-4388	

Apple has not yet filed any of these exhibits with the Court, but it is possible Apple might offer one or more of these exhibits, or testimony about their contents, at trial. Valve brings this motion now in an abundance of caution to ensure that its confidential information is protected and sealed should it be presented or offered at trial. For the reasons set forth below and in the accompanying Declaration of Karl Quackenbush, Valve respectfully requests that the Court (1) seal these trial exhibits to prevent competitive and economic harm, (2) close the courtroom to the public for any testimony regarding these exhibits or the information they contain, and (3) direct the parties not to refer to this information in opening statements, closing argument or any demonstratives made available on the public record. Valve met and conferred with Apple and Epic regarding this Motion, and they do not oppose Valve's Motion.

Unredacted versions of these exhibits have been provided to the Court by Apple, should need arise for the Court to consider them in connection with this Motion. In addition, Valve is submitting herewith proposed redacted versions of all of the exhibits other than DX-5320, which is a one page document containing highly sensitive financial information that cannot reasonably be redacted.

### LEGAL STANDARD

Federal Rule of Civil Procedure 26(c) provides the "good cause" standard for the purposes of sealing documents presented at trial. *Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006). Civil Local Rule 79-5 provides that documents, or portions thereof, may be sealed if a party "establishes that the documents, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law." Civ. L.R. 79-5(b).

1 The Court has “broad latitude” “to prevent disclosure of materials for many types of  
 2 information, including, *but not limited to*, trade secrets or other confidential research,  
 3 development, or commercial information.” *Phillips ex rel. Estates of Byrd v. Gen. Motors*  
 4 *Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002) (emphasis in original). The test applied is whether  
 5 “‘good cause’ exists to protect th[e] information from being disclosed to the public by  
 6 balancing the needs for discovery against the need for confidentiality.” *Pintos v. Pac. Creditors*  
 7 *Ass’n*, 605 F.3d 665, 678 (9th Cir. 2010) (quoting *Phillips*, 307 F.3d 1206, 1213 (9th Cir.

8 2002)). “In general, ‘compelling reasons’ sufficient to outweigh the public’s interest in  
 9 disclosure and justify sealing court records exist when such ‘court files might have become a  
 10 vehicle for improper purposes,’ such as the use of records to gratify private spite, promote  
 11 public scandal, circulate libelous statements, or release trade secrets.” *Kamakana*, 447 F.3d at  
 12 1179 (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598 (1978)).

13 Sealing the judicial record is proper when the disclosure of non-public information might  
 14 cause economic or competitive harm. *See Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d  
 15 1092, 1097 (9th Cir. 2016), *cert. denied sub nom. FCA U.S. LLC v. Ctr. for Auto Safety*, 137 S.  
 16 Ct. 38 (2016) (finding there was a compelling reason for sealing when records contain business  
 17 information that could be used to harm a litigant’s competitive standing); *Apple Inc. v. Samsung*  
 18 *Electronics Co., Ltd.*, 727 F.3d 1214, 1228 (Fed. Cir. 2013) (concluding the district court abused  
 19 its discretion in denying a motion to seal about “profit, cost, and margin data”).

## 20 DISCUSSION

21 **The Court should grant Valve’s motion to seal its non-public financial and**  
 22 **competitively-valuable information, including highly confidential sales and revenue**  
 23 **information, business strategies, contractual terms, and other competitively sensitive**  
 24 **information.** The Supreme Court has recognized that sealing may be appropriate to prevent  
 25 judicial documents from being used “as sources of business information that might harm a  
 26 litigant’s competitive standing.” *Nixon v. Warner Comm’ns, Inc.*, 435 U.S. 589, 598 (1978).

27 Courts routinely seal information where disclosure could harm a litigant’s competitive  
 28 standing or provide an unfair advantage to competitors, including for example:

- 1 • Where the information contains confidential financial, sales or revenue information. *See,*  
2 *e.g., Apple Inc. v. Samsung Electronics Co., Ltd.*, 727 F.3d 1214, 1225 (Fed. Cir. 2013)  
3 (concluding that the district court abused its discretion in denying a motion to seal as to  
4 “profit, cost, and margin data”); *Linex Techs., Inc. v. Hewlett-Packard Co.*, No. 13-CV-  
5 159, 2014 WL 6901744 (N.D. Cal. Dec. 8, 2014) (concluding that sensitive financial  
6 information falls within the class of documents that may be filed under seal).
- 7 • Where the information contains business and financial operational information. *See,*  
8 *e.g., Vigdor v. Super Lucky Casino, Inc.*, No. 16-CV-05326, 2018 WL 4510734, at \*2  
9 (N.D. Cal. Sept. 18, 2018) (sealing “business and financial information relating to the  
10 operations of Defendants”).
- 11 • Where the information discusses pricing strategy. *See, e.g., Rodman v. Safeway Inc.*,  
12 No. 11-cv-03003, 2014 WL 12787874, at \*2 (N.D. Cal. Aug. 22, 2014) (granting motion  
13 to seal “information discussing Safeway’s pricing strategy”).
- 14 • Where disclosure could lead to use of competitive information in contract negotiations  
15 and price undercutting by competitors. *See, e.g., Philips v. Ford Motor Co.*, No. 14-cv-  
16 02989, 2016 WL 7374214, at \*6 (N.D. Cal. Dec. 20, 2016) (concluding that “need to  
17 avoid competitive disadvantage in contract negotiations and undercutting by competitors  
18 is a compelling reason that justifies sealing”).

19 Good cause exists to seal the trial exhibits listed above, as well as any testimony about  
20 them. As detailed in the accompanying Quackenbush Declaration, Valve is a privately held  
21 company with no outside shareholders or lenders. It is not subject to public regulatory  
22 reporting and auditing requirements. Valve does not publicly disclose its sales and revenue  
23 information and projections or its business strategies. Rather, Valve guards such information  
24 from competitors and the public, and derives a significant value from the confidentiality of  
25 such information. In addition, because third party games are available on Steam, Valve has a  
26 large amount of third-party sales and revenue information, which Valve does not publicly  
27 disclose in order to protect the third parties’ confidentiality. Valve’s competitive standing has  
28 been developed over the years with a focus on differentiating itself from its competitors,

1 including but not limited to one or more parties in this case. Public filing or testimony about  
 2 the highly confidential information and trade secrets that Valve seeks to seal could be of  
 3 interest to its competitors and would allow unfair advantage and harm to its competitive  
 4 standing.

5 Valve understands that Apple is today submitting working copies of unredacted trial  
 6 exhibits to the Court. In recognition of the policy favoring public access to the Court's records,  
 7 Valve is submitting herewith proposed redacted versions of the trial exhibits it seeks to have  
 8 sealed, with one exception. Exhibit DX-5320 is a one page document containing highly  
 9 confidential internal financial information that Valve (a privately-held company) has never  
 10 publicly disclosed or distributed outside the company, as further detailed in the accompanying  
 11 Quackenbush Declaration ¶ 8. This one page document only contains such information—  
 12 redaction is not feasible—so Valve requests that DX-5320 (and any testimony about it) be sealed  
 13 in its entirety.

14 Apple has not yet publicly filed these exhibits, offered them at trial, or offered any  
 15 testimony about them, and may well not do so.

### 16 CONCLUSION

17 For each of the foregoing reasons, Valve respectfully requests that the Court seal the  
 18 confidential information described above, including the following documents produced by  
 19 Valve and listed as Trial Exhibits by Apple, along with any information from such documents  
 20 or testimony about them:

21 DX-3585	DX-4514
22 DX-3746	DX-5320
23 DX-3868	DX-5321
24 DX-3931	DX-5322
25 DX-4200	DX-5333
26 DX-4202	DX-5365
27 DX-4388	

1 Valve also requests that the Court close the courtroom to the public (including the media)  
2 and to the parties' witnesses, employees or in-house counsel (those that do not qualify as persons  
3 who can receive confidential or highly confidential information under the protective order in  
4 place in this action) for any testimony regarding these exhibits or the information they contain,  
5 and direct the parties not to refer to this information in opening statements, closing argument or  
6 any demonstratives made available on the public record.

7  
8 Dated: April 29, 2021

FOX ROTHSCHILD LLP

9 By: /S/ Jaemin Chang  
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12 Attorneys for non-party Valve Corporation  
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